

No. 78

MOTION FILED

JUN 25 1962

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In The

**Supreme Court of the United States**

October Term - 1961

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In the Matter

of

**DUTCHER CONSTRUCTION CORPORATION,  
Bankrupt.**

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**MOTION FOR LEAVE TO FILE AN  
AMICUS CURIAE BRIEF**

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**EDWARD M. MURPHY**

*Attorney for Paulus F. McKee,  
Trustee in Bankruptcy of  
Funderburk Construction  
Corp. No. B47910,  
420 S.E. Jackson Street,  
Roseburg, Oregon*

In The

**Supreme Court of the United States**

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**TO THE HONORABLE SUPREME COURT OF  
THE UNITED STATES:**

Consent to the filing of an amicus curiae brief by your applicant, Edward M. Murphy, having been refused by appellee, applicant respectfully files this motion for leave to file an amicus curiae brief herein.

## **The Nature Of Applicant's Interest**

Applicant is attorney for Paulus F. McKee, Trustee in Bankruptcy for Funderburk Construction Corporation a road construction contractor, which was adjudicated a bankrupt in Cause No. B47910 in the United States District Court for Oregon. The Trustee with the Court's approval employed a road contractor who completed a government road project which was uncompleted at the time of bankruptcy. The bankrupt's bonding company, Federal Insurance Company, made payments in the amount of \$37,931.35 to various materialmen and laborers on the road project and the bonding company has asserted a claim before the Honorable Lester Oehler, Referee in Bankruptcy, to all of the proceeds due the Trustee from the completion of this project. A hearing has been held on this claim but no decision has been rendered by the Referee.

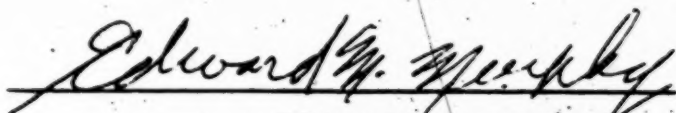
Part of these funds to which the bonding company lays claim are still in the possession of the United States government and part of the funds are in the possession of the applicant. In addition the bonding company is claiming to be

the owner of a cause of action for breach of contract which the bankrupt had against a subcontractor on the road project.

### **Reason Why Applicant Should Be Allowed To File An Amicus Curiae Brief**

Your applicant by completing the Yellowstone Road Project created in part the funds now being held by the United States government and to which the bankrupt's surety has laid claim. The reason for requesting opportunity to file an amicus curiae brief is to show the effect that a decision favorable to the surety would have in a case where the Trustee completed the bankrupt's government construction project. Monies retained by the government on a government construction project have been considered as security to assure the completion of the project. If leave is granted to us to file an amicus curiae brief, we wish to show that a decision in favor of the surety company in this case would have the effect of depriving the applicant of the benefit of these retained funds in the event he completes the project but permitting the surety to receive these funds in the event the surety completes the project.

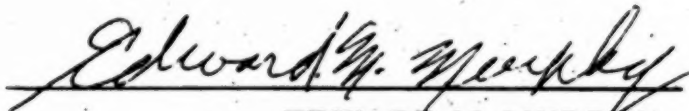
WHEREFORE, applicant prays that he be granted permission to file an amicus curiae brief herein.



EDWARD M. MURPHY

Applicant

I hereby certify that I have served a copy of the foregoing motion on Honorable Raymond T. Miles, 942 Ellicott Square Building, Buffalo 3, New York, Appellant's counsel of record, and Honorable Mark N. Turner, 440 M & T Building, Main and Swan Streets, Buffalo 2, New York, Appellee's counsel of record, by depositing on June 19, 1962, a copy of same in a United States mail box with air mail postage prepaid, addressed to each of the above named counsel of record at the post office address set forth above.



EDWARD M. MURPHY

Applicant